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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/572,727	03/23/2007	Geoffrey Furneaux	HO-P03292US0	6885

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EXAMINER

PATTERSON, MARC A

ART UNIT	PAPER NUMBER
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1782

NOTIFICATION DATE	DELIVERY MODE
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06/24/2011

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/572,727	Applicant(s) FURNEAUX, GEOFFREY	
	Examiner MARC PATTERSON	Art Unit 1782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9, 10 and 14-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9, 10 and 14-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/9/10</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

NEW REJECTIONS

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 16 – 21 and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In line 1 of the claims, the term 'package' has been apparently been omitted in a typographical error.

Claim Objections

3. Claim 26 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The claim provides for an alternate step, therefore the use of one compostable sheet or two compostable sheets.

Claim Rejections – 35 USC § 103(a)

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 9 – 10 and 14 – 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ingraham (U.S. Patent No. 6,893,672) in view of Garcia et al (U.S. Patent No. 5,854,304)

With regard to Claim 14, Ingraham discloses a package (column 3, line 47) comprising two sheets comprising a film and tray that are heat sealed between 130 and 200 degrees Celsius (column 14, lines 17 - 28); the film comprises an outer layer comprising nylon 6 and a second layer comprising nylon 6, and an inner sealing layer comprising EVA (column 13, lines 1 - 18); Ingraham therefore discloses a sealing film having a core of a high melting point layer and a low melting point layer; one of the sheets is a tray, therefore side edge seams and top edge seams and a bottom seam are disclosed by Ingraham. Ingraham fails to disclose top and side edge seams bonded at higher than 160 degrees Celsius and bottom seams bonded at 100 to 150 degrees Celsius. However, as stated above, sealing between 130 and 200 degrees Celsius is disclosed by Ingraham. It therefore would have been obvious for one of ordinary skill in the art to seal any regions at temperatures of 160 degrees Celsius and 100 to 150 degrees Celsius (film; column 5, lines 37 - 40), as the temperatures are between 130 and 200 degrees Celsius. Ingraham also fails to disclose sheets that are compostable.

Garcia et al teach a compostable packaging (column 3, lines 32 – 40) for the purpose of obtaining environmental degradation in a landfill (column 2, lines 55 - 60).

It therefore would have been obvious for one of ordinary skill in the art to provide for compostable packaging in order to obtain environmental degradation in a landfill as taught by Garcia et al.

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With regard to Claim 9, Ingraham fail to teach a beverage making ingredient. However, Ingraham teaches a container for frozen products and food products (column 1, lines 1 – 15). It therefore would have been obvious for one of ordinary skill in the art to provide a frozen product comprising a beverage, as a food product is disclosed by Ingraham. With regard to the claimed aspect of the container being a 'beverage making capsule,' the limitation is directed to an intended use and is therefore given little patentable weight.

With regard to Claim 10, because a nylon is disclosed by Ingraham, a barrier layer is disclosed by ingraham, therefore a filter sheet, bonded to an internal surface.

With regard to Claim 15, Ingraham fails to disclose a nozzle that is inserted into the top seam. However, Ingraham discloses opening by peelability (column 3, lines 52 – 53); it therefore would be obvious for one of ordinary skill in the art to provide for a nozzle that is inserted into the top seam, to provide for peeling by air of the opening.

With regard to Claim 16 – 20, a low heat sealing range in the range of 5N to 20N and a high sealing range in the range of 50N would therefore be disclosed by Ingraham.

With regard to Claim 21, Ingraham also fail to disclose a flexible reinforcing strip attached along the bottom seam to provide more controlled opening of the seam. However, because Ingraham discloses opening by peelability, it would have been provided for a flexible reinforcing strip to provide more controlled peeling, therefore opening of the seam.

With regard to Claims 22 - 25, Ingraham therefore disclose a method of manufacture comprising placing the sheets, therefore webs, in a face - to - face relationship and sealing the top, bottom and side edges.

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With regard to Claim 26, Ingraham fail to disclose the alternate step of folding over a single compostable sheet. However, it would have been obvious to provide for the alternate step of folding over a single compostable sheet for the purpose of using fewer sheets in manufacture

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc A Patterson whose telephone number is 571-272-1497.

The examiner can normally be reached on Mon - Fri 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Marc A Patterson/
Primary Examiner, Art Unit 1782